

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission)	
On its Own Motion)	
)	
Investigation concerning Illinois Bell)	Docket No. 01-0662
Telephone Company's compliance)	
with Section 271 of the)	
Telecommunications Act of 1996)	

**REPLY OF CIMCO COMMUNICATIONS, INC.,
FORTE COMMUNICATIONS, INC., AND XO ILLINOIS, INC. TO THE JOINT
PETITION FOR INTERLOCUTORY REVIEW OF THE HEARING EXAMINER'S
RULING ON APRIL 17, 2003, OR, ALTERNATIVELY, MOTION TO REOPEN
THE RECORD TO RECEIVE ADDITIONAL INFORMATION**

CIMCO Communications, Inc. ("CIMCO"), Forte Communications, Inc. ("Forte"), and XO Illinois, Inc. ("XO"), hereby respond to the Joint Petition for Interlocutory Review of the Hearing Examiner's Ruling on April 17, 2003, or Alternatively, Motion to Reopen the Record to Receive Additional Information. In support of this Response, CIMCO, Forte and XO state as follows:

On April 16, 2003 SBC withdrew its Michigan 271 application from the FCC because there were several issues that would have prevented FCC approval of the application. FCC Chairman Powell provided an explanation for SBC's withdrawal, stating that there were important outstanding issues that prevented approval, the most troubling of which dealt with wholesale billing.¹ AT&T, McLeod, TDS, and WorldCom (the "Joint CLECs") filed an Emergency Motion on April 17, 2003 seeking additional time in this docket to consider the

¹ See Statement of Chairman Powell, Docket WC 03-16, p. 1 (April 16, 2003). This was attached to the Joint CLECs' Petition as Exhibit B.

impact of SBC's withdrawal from the FCC of its Michigan 271 application. The ALJ denied the Joint CLECs' Emergency Motion.

For the following reasons CIMCO, Forte and XO support the joint petition of the Joint CLECs to review and reverse the ALJ's April 17, 2003 ruling or in the alternative reopen the record in order to receive additional evidence.

As part of her ruling, the ALJ stated:

Further, I do not believe that whatever happened with this Michigan filing is an intervening circumstance of such value or weight in this proceeding that it would call for disruption of the schedule.

Tr. 3909.

CIMCO, Forte and XO agree that the ALJ's ruling was erroneous because the ruling was made without specific knowledge of the reasons for SBC's withdrawal of its 271 application from the FCC and without specific knowledge of whether those reasons are applicable to the Illinois 271 proceeding. The ICC has a significant role in providing its official stamp on SBC Illinois' 271 application. The ICC should not place its recommendation for the disposition of SBC Illinois' 271 application upon a foundation that lacks evidentiary support.

Given the limited time frame in which these matters have been considered, it is clear that the ALJ in this case has not had the time to review the full basis for SBC's withdrawal of its Michigan 271 application before the FCC. The letters of FCC chairman Powell and SBC executive Bill Daley clearly indicate that there are other issues behind the reasons for SBC withdrawal of the application. Joint Petition for Interlocutory Review of the Hearing Examiner's

Ruling on April 17, 2003, or Alternatively, Motion to Reopen the Record to Receive Additional Information, Exhibit I. Because this Commission has not heard the real basis for the withdrawal it should seek to assure its final order in this proceeding is fully supported by relevant and sustainable evidence relative to these matters. Because there is clearly more than one issue, CABS billing, in question this Commission should reopen the record and consider what the factors leading to the Michigan 271 withdrawal were and whether those factors have been encountered in Illinois.

For example, the CLECs in this proceeding provided sworn testimony regarding significant problems in SBC's wholesale billing, the integrity and reliability of SBC's performance measurement data and SBC's ability to provide nondiscriminatory access to UNEs. In short, the Commission should be aware of the factors that the FCC deemed so important that necessitated SBC's withdrawal of its Michigan 271 application from the FCC.

The record is further deficient in that SBC has chosen not to provide this Commission with verified, sworn, statements on the matter. CIMCO, Forte and XO pointed this fact out during the last hearing, although SBC has chosen not to correct this record deficiency. SBC refers to a vague assurances that the "details and the need for this reconciliation were fully disclosed to the CLECs' (staff) through calls, business to business discussions, an accessible letters." SBC Illinois ' Opposition To Joint CLECS' Emergency Motion, ¶4. Such statements by SBC are questionable when, as here, SBC chose not to verify its assurances as

required by ICC rules. 83 ILL Admin. Code 200.190 (c). The fact is that the record is not complete and that led to an erroneous ALJ ruling on this matter.

WHEREFORE, for these reasons, in addition to those of the Joint CLECs, the Commission must reverse the ALJ's April 17, 2003 ruling to deny the Joint CLECs' Emergency Motion. The Commission should now reopen the record in order to address the factors leading to the withdrawal of SBC's Michigan 271 application and the additional information that SBC was required to provide to the FCC.²

Respectfully submitted,

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² CIMCO, Forte, and XO further support the Joint CLECs' alternate request to schedule additional hearings in this docket.